

ADOBE OIL & GAS CORP.

IBLA 81-994

Decided March 31, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application. M 48707 Acq.

Affirmed.

1. Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: First-Qualified Applicant

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

APPEARANCES: L. W. Petersen, Esq., Billings, Montana, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Adobe Oil & Gas Corporation has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated July 27, 1981, rejecting its noncompetitive oil and gas lease application, M 48707 Acq., for failure to file a complete list of corporate officers with its application, pursuant to 43 CFR 3102.2-5(a)(3). Appellant's application was drawn with first priority for parcel MT 117 in the July 1980 simultaneous oil and gas lease drawing. 1/

1/ The application was actually filed by Montana & Plains Oil Company. However, by notice dated Mar. 6, 1981, BLM recognized the merger of Montana & Plains Oil Company and Adobe Oil & Gas Corporation (Adobe), with Adobe as the surviving corporation. The merger was recognized as of "January 30, 1981, the date of filing all of the required evidence."

On February 26, 1980, BLM received a statement of corporate qualifications from Montana & Plains Oil Company, appellant's predecessor in interest, which stated, in relevant part: "The following named officers are authorized to act on behalf of the company in all matters relating to [oil and gas] * * * leases: Name Victor P. Stabio; Title President." By notice dated February 29, 1980, BLM accepted the qualifications statement and placed it in the general qualifications file under serial number MONTANA 065500.

Appellant's noncompetitive oil and gas lease application was signed by Victor P. Stabio and referenced serial records "M-065500," as containing its previously filed statements of qualifications. The application was dated July 18, 1980.

By notice dated January 23, 1981, BLM informed Montana & Plains Oil Company that its qualifications file was not "current," because it did not contain "a complete list of all corporate officers." (Emphasis in original.) On January 26, 1981, BLM received a list of corporate officers, which stated: "Victor P. Stabio[,] President/Treasurer[,] Authorized to sign on behalf of Mountain & Plains Oil Co.[:] John Kane[,] Vice President/Secretary[:] Donna Nyby[,] Assistant Secretary[:]" Victor P. Stabio certified that the list was complete "as of June 16, 1980."

[1] The applicable regulation, 43 CFR 3102.2-5, 2/ published in the Federal Register of May 23, 1980, effective June 16, 1980, provides, in relevant part:

(a) A corporation which seeks to lease shall submit with its offer, or application if leasing is in accordance with Subpart 3112 of this title, a statement showing:

* * * * *

(3) A complete list of corporate officers, identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing[:]

45 FR 35162 (May 23, 1980). 3/

2/ On Feb. 26, 1982, the Department published interim final regulations revising 43 CFR 3102 and effectively eliminating the requirement to file the statement of qualifications found in 43 CFR 3102.2-5. 47 FR 8544 (Feb. 26, 1982). While in certain circumstances the Board may apply revised regulations to a pending matter where it benefits the affected party (see James E. Strong, 45 IBLA 386 (1980)), it is not possible to do so in this case because of the intervening rights of the second and third priority applicants.

3/ The prior regulation, 43 CFR 3102.4-1 (1979), provided, in relevant part: "If the offeror is a corporation, the offer must be accompanied

In its statement of reasons for appeal, appellant contends that the BLM decision to reject its noncompetitive oil and gas lease application was "arbitrary and capricious," for a number of reasons, namely: (1) BLM has applied 43 CFR 3102.2-5 inconsistently because other BLM district offices have accepted doubtful corporate qualifications or afforded applicants an opportunity to update their corporate qualifications; (2) BLM incorrectly assumed that appellant's qualifications were outdated "as of the effective date of the new regulation;" (3) the term "corporate officers" is "so ambiguous" as to render the regulation unenforceable; 4/ (4) there is no statutory authority for requiring a list of corporate officers; (5) the requirement is "superfluous" because an applicant is required to identify other parties in interest, including corporate officers, under 43 CFR 3102.2-7; (6) appellant should have been afforded an opportunity to update its corporate qualifications; and (7) BLM is estopped by virtue of the fact that the Montana and Wyoming State Offices accepted corporate qualifications listing only Victor P. Stabio as a corporate officer, effective as of the time of the July 1980 drawing.

The applicable regulation, 43 CFR 3102.2-5, in effect at the time of the July 1980 drawing, clearly required that a "complete" list of corporate officers be submitted with a noncompetitive oil and gas lease application. In lieu of submitting such a list, an applicant was entitled to reference by serial number a statement of corporate qualifications, including such a list, on file with the appropriate BLM state office. 43 CFR 3102.2-1(c). However, 43 CFR 3102.2-1(c) also provides: "Amendments to a statement of qualifications shall be filed promptly and the serial number shall not be used if the statement on file is not current." Appellant was under a clear mandate to keep its qualifications file "current."

In submitting its noncompetitive oil and gas lease application, appellant referenced, by serial number, the records containing its previously filed statements of qualifications. However, the list of corporate officers on file was not complete. A complete list of corporate officers, certified correct as of June 16, 1980, was not submitted until January 26, 1981, well after the July 1980 drawing.

fn. 3 (continued)

by a statement showing * * * (b) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters."

4/ The term "corporate officers" is not ambiguous. It is to be taken in its normal sense. 45 FR 35157 (May 23, 1980). We note that appellant had no difficulty in identifying its corporate officers in its Jan. 26, 1981, submission.

Under the prior regulation, 43 CFR 3102.4-1, we consistently held that the requirement of submission of a corporate qualifications statement with an oil and gas lease offer or reference to records where such material had previously been filed was mandatory and that failure to do so would result in rejection of the lease offer. Ari-Mex Oil & Exploration, Inc., 53 IBLA 37 (1981); Cheyenne Resources, Inc., 46 IBLA 227, 87 I.D. 110 (1980), and cases cited therein. The applicable regulation is similarly couched in mandatory terms, and likewise the Board has held that the failure to submit a complete list of corporate officers with the application, or to reference such a list, requires rejection of the application. Altex Oil Corp., 61 IBLA 270 (1982); Cimmarron Corp., 61 IBLA 90 (1982); see Stephen A. Pitt, 57 IBLA 365 (1981).

Moreover, 43 CFR 3112.6-1(b) provides, in relevant part: "The application of any applicant who * * * has not filed or caused to be filed all evidence of qualification required by Subpart 3102 of this title shall be rejected." (Emphasis added.) Accordingly, we conclude that it was proper for BLM to reject appellant's application.

The purpose of requiring the disclosure of all corporate officers is to permit BLM to identify those situations where corporate officers and the corporation may have engaged in a multiple filing, in violation of 43 CFR 3112.6-1. See preamble to proposed revision of 43 CFR Part 3100, 44 FR 56177 (Sept. 28, 1979). As such, the aim is not to determine whether the corporation is a sole party in interest in a particular application; rather, it is to determine in what other applications for a particular parcel the corporation may have an interest, by virtue of other filings made by corporate officers. See Altex Oil Corp., supra at 275 (Judge Burski concurring).

Moreover, appellant was not entitled to an opportunity following the July 1980 drawing to update its corporate qualifications. The regulations clearly require that a complete list of corporate officers be submitted with the lease application or be referenced at the time of submission. Giving an unqualified first-drawn applicant, such as appellant, additional time to cure its application by waiving mandatory requirements would illegally infringe on the rights of a second-drawn qualified applicant. Stephen A. Pitt, supra at 368, and cases cited therein.

We recognize that this is a matter governed not by statute but by regulations. Nevertheless, we are bound by such regulations. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Altex Oil Corp., supra at 273. Nor is the result changed by the fact that other BLM state offices may have interpreted the regulation differently. Appellant is not entitled to rely on an erroneous interpretation by BLM employees in other state offices which violates 43 CFR 3102.2-5. Cf. Leroy G. Boudreaux, 62 IBLA 225 (1982). Finally, we can discern absolutely no basis for the imposition

of an estoppel. The alleged BLM action assertedly giving rise to an estoppel took place subsequent to the July 1980 drawing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

